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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 JAMES CLINTON FAIRCLOTH, JR.,

8 Petitioner,

9 v.

10 PATRICK R. GLEBE,

11 Respondent.

No. C11-5895 RBL/KLS

ORDER DENYING MOTION FOR THE
APPOINTMENT OF COUNSEL

12 This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge
13 Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner has
14 filed a motion for the appointment of counsel. ECF No. 9. Petitioner states that he is unable to
15 afford counsel, that his imprisonment will greatly limit his ability to litigate, that the issues in
16 this case are complex, he has limited access to the law library, and that he has limited legal
17 knowledge. *Id.*

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19 There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254
20 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See
21 *Terravona v. Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164,
22 1168 (9th Cir. 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United
23 States District Courts. In addition, if a claim has been adjudicated on the merits by a state court,
24 a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was
25 before the state court.” *Cullen v. Pinholster*, --- U.S. ---, 131 S.Ct. 1388, 1399 (2011).
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ORDER DENYING MOTION FOR COUNSEL - 1

1 Therefore, Petitioner's request for federal habeas relief must be determined solely on the basis of
2 the record that was before the state court.

3 In addition, an evidentiary hearing has not been granted in this case and the claims in the
4 petition are adequately set forth and articulated. The court has not yet determined that an
5 evidentiary hearing is necessary. Therefore, Petitioner's request for counsel shall be denied at
6 this time.

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8 Accordingly, it is **ORDERED**:

9 (1) Petitioner's motion for counsel (ECF No. 9) is **DENIED**.

10 (2) The Clerk is directed to send copies of this Order to Petitioner.

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12 DATED this 3rd day of January, 2012.

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15 Karen L. Strombom
16 United States Magistrate Judge
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